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Attorney for Federal Express Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

LORI ELLEN PEQUET,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
FEDERAL EXPRESS CORP., now)	
known as FedEx Corporation, DOES)	
1-25.)	
Defendants.)	
)	

**DEFENDANT FEDERAL EXPRESS CORPORATION'S NOTICE OF
REMOVAL**

Defendant Federal Express Corp., alleges as follows:

1. The above-entitled action was filed in the Montana County District in Gallatin County District Court, on January 9, 2020. However, Plaintiff failed to

effectuate service on Federal Express Corporation. Plaintiff subsequently filed a First Amended Complaint on June 22, 2020. Plaintiff effectuated service of her First Amended Complaint on Federal Express Corporation on September 10, 2020. The matter is now pending in said Montana District Court.

2. Upon information and belief, and per the allegations contained in the First Amended Complaint, at the time of commencement of this action, the Plaintiff was and is now a resident and citizen of Gallatin County, Montana.

3. At the time of commencement of this action, the Defendant, Federal Express Corporation was and is an all-cargo airline organized under the laws of the State of Delaware with its principal place of business in Memphis, Tennessee.

4. This is an action over which this Court has original jurisdiction under 28 U.S.C. §1332(a)(1), and thus this action is removable to this Court under 28 U.S.C. §1441(a) and (b).

5. Plaintiff has filed suit in the instant action under the Montana Wrongful Discharge Act from Employment Act (Mont. Code Ann. §§ 39-2-901 — 39-2-915). The statute states that if an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge. *Id* at Mont. Code Ann. § 39-2-905; *Allison v. Jumping Horse Ranch*, 255 Mont. 410, 843 P.2d 753, 49 Mont. St. Rep. 1039, 1992 Mont. LEXIS 319 (Mont. 1992). Plaintiff may also recover punitive damages if she

establishes by clear and convincing evidence that her employer engaged in actual fraud or malice in the discharge of the Plaintiff. Id.

6. The amount in controversy claimed by Plaintiff in this action, exclusive of interest and costs, on the basis of the Complaint and First Amended Complaint, exceeds Seventy-Five Thousand Dollars (\$75,000.00). As a result of her claims, Plaintiff may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge. Mont. Code Ann. § 39-2-905 if she were to win this action. Plaintiff was terminated from her position on July 9, 2019. At the time of her termination, Plaintiff earned \$24.49 an hour and worked an average of 38.32 hours a week. If this matter is tried before a jury by September 14, 2021, Plaintiff's front pay would be approximately \$108,880.92. (Declaration of Bridget Zaborski, ¶7-8).

7. Plaintiff elected a lump sum payment from her pension account in the amount of \$47,166.76, which she received on or about on December 1, 2019. Had Plaintiff taken a lump sum pension payment at age sixty (60), she would have received approximately \$53,562.70, for a difference of \$6,395.94. (Declaration of Bridget Zaborski, ¶9).

8. On the basis of Count II of the Complaint and Count I of the First Amended Complaint, wherein punitive damages are sought, the amount in controversy claimed by Plaintiff in this action, exclusive of interest and costs,

exceeds Seventy-Five Thousand Dollars (\$75,000.00). *See Bell v. Preferred Life Assur. Socy.*, 320 U.S. 238, 240, 64 S. Ct. 5 (1943) (finding that a punitive damage demand may be considered as part of the amount in controversy in a civil action).

9. Evidence of jury verdicts in a similar case may be considered to determine the amount in controversy. *Simmons v. PCR Tech* (N.D. Cal. 2002), 209 F. Supp. 2d 1029, 1033. Juries in the State of Montana have awarded more than Seventy-Five Thousand Dollars (\$75,000) in punitive damages in cases alleging wrongful termination. *See Treperinas v. Burlington Northern and Santa Fe Railway Company*, 12th Judicial District Court, Hill County, Montana, 2004 ML 3485, 2004 Mont. Dist. LEXIS 3409, Cause No. DV 04-431. (Treperinas sued Burlington Northern Santa Fe Railroad on a wrongful termination theory, the jury awarded Plaintiff \$300,000.00 in punitive damages).

10. A copy of the Complaint and First Amended Complaint filed in said Montana District Court action is attached hereto and marked as Exhibit A and Exhibit B, respectively. Copies of all other pleadings which have been filed in the state court file will be forwarded by the Clerk of said court.

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DATED this 2nd day of October, 2020.

Respectfully submitted,

FEDERAL EXPRESS CORPORATION

/s/ Adrianna Potts

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Attorney for Federal Express Corporation

CERTIFICATE OF SERVICE

I, the undersigned, a representative of the law firm Crowley Fleck hereby certify that I served a true and complete copy of the Foregoing Defendant Federal Express Corporation's Notice of Removal on the following persons by the following means:

<u>1-2</u>	CM/ECF
___	Hand Delivery
<u>3</u>	Mail
___	Overnight Delivery Service
___	Fax
___	E-Mail

1. Clerk, U.S. District Court
2. Eric E. Holm
Holm Law Firm, PLLC
115 N Broadway #304
Billings, MT 59103
3. Jennifer Brandon
Clerk of the Montana Eighteenth Judicial District Court, Gallatin County
Law and Justice Center
615 S. 16th Ave.
Bozeman, MT 59715
United States

/s/ Adrianna Potts